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No. 574

In the

Supreme Court of the United States

OCTOBER TERM, 1963

ROBERT M. WILLIAMSON, JR. AND MARJORIE WILLIAMSON, INDIVIDUALLY AND AS INDEPENDENT EXECUTORS OF THE ESTATE OF EFFIE GILMER WILLIAMSON, DECEASED,
Petitioners,

v.

THE HONORABLE PAUL PEURIFOY, JUDGE OF THE 95TH DISTRICT COURT IN DALLAS COUNTY, TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinions of the United States District Court, not officially reported, and its judgment, appear at pages 87-93 and 75-77 of the mimeographed record filed in the Court of Appeals, and also in Appendix A of this Respondent's Brief. The opinion of the Court of Appeals for the Fifth Circuit, which quotes at length the opinion of the United

States District Court overruling the Petitioners' Motions, is reported at 316 F. 2d 774 and is set out at page 44 of the Petition.

JURISDICTION

Respondent submits that the Petition does not adequately set forth the jurisdictional requisites for granting a Writ of Certiorari. Although the Petition nominally seeks a review of a judgment of the Court of Appeals under Sec. 1254(1) of Title 28, United States Code, it basically seeks to review an interlocutory order of a State District Court in a pending suit, and does not and cannot comply with Rule 23(f), Rules of the Supreme Court; and the Petition also does not and cannot show the basis for federal jurisdiction in the United States District Court, as required by Rule 23(g), Rules of the Supreme Court.

QUESTIONS PRESENTED

1. Whether the Plaintiffs in a suit filed by them in a State District Court involving no federal question and now pending untried in such Court, can appeal from an interlocutory order of the State District Court to a United States District Court; and if they can, whether such Plaintiffs are entitled in this suit to a decree in the United States District Court declaring such interlocutory order of the State District Court void.

2. Whether a United States District Court must *as a matter of law* grant an injunction to invalidate an interlocutory order of a State District Court in a case pending

untried in the State Court, where not necessary in aid of the jurisdiction or to protect or effectuate any judgment of the United States Court.

3. Whether the Plaintiffs in a State District Court suit are entitled, without exhausting or even pursuing any remedies presently available to them in the State Courts, to an order from a United States District Court (a) declaring void an interlocutory order of the State Court rendered in a pre-trial hearing relating to the pleadings and (b) otherwise supervising the action of the State District Courts.

4. Whether the *Plaintiffs* who filed a suit in a State District Court over which the United States District Courts did not have original jurisdiction and involving no federal question, are entitled *as a matter of law* several years after such suit was filed and after a pretrial hearing therein, to remove it to the United States District Court.

STATUTES INVOLVED

Sections 1441 (a) and (b) and 2283 of Title 28, United States Code and Articles 1995 (101—Dallas), Sec. 8 and 2090 (a), Sec. 5, Texas Revised Civil Statutes, are set forth in Appendix B of the Respondent's Brief.

STATEMENT

In 1953 Petitioners and their mother, Mrs. Effie Gilmer Williamson (who died in 1963, and of whose estate Petitioners are now acting as Independent Executors), all residents of Texas, as Plaintiffs, filed a suit in the District

Court of Dallas County, Texas against Annie Gilmer and others (who are sisters of Mrs. Effie Gilmer Williamson and the devisees and heirs of her deceased sisters) and also against The Gilmer Company (formerly a Texas corporation organized in or about the year 1923 by the sisters of Mrs. Effie Gilmer Williamson and dissolved in 1946), most of whom are residents of Texas, to set aside a Deed executed by said Plaintiffs in 1927 for the benefit of the sisters of Mrs. Effie Gilmer Williamson, covering lands located mainly in Texas, because of alleged fraud, inadequacy of consideration and lack of a proper acknowledgment.

From 1953 until 1961 said Plaintiffs filed three Amended Petitions in said suit and were represented by no fewer than seven counsel of record (R. 30). Said suit was transferred from the 14th to the 134th, to the 68th, to the 95th District Courts of Dallas County (R. 95). It is stated categorically that none of the delay in bringing said suit to a conclusion can be charged against either the Court or said Defendants. In December, 1960 Miss Marjorie Williamson prepared and caused the attorney for said Plaintiffs to sign and file their Third Amended Petition. This Petition not only sought to set aside the 1927 Deed but in language neither plain nor concise referred to and complained of numerous transactions that said Plaintiffs had with members of their family and the executors of the estates of their parents since the year 1906. Pursuant to the Texas Rules of Civil Procedure said Defendants filed an Amended Answer containing special excep-

tions (comparable to motions for a more definite statement or to strike under Rule 12 (e) and (f), Federal Rules of Civil Procedure) asking, among other things, that certain unintelligible, immaterial, irrelevant and prejudicial allegations be stricken, and certain vague, indefinite and ambiguous allegations be stated more definitely and precisely.

In March, 1961 Respondent held pretrial hearings, lasting a half of one day and most of another day, hearing arguments by said Defendants' and Plaintiffs' respective counsel and also Miss Marjorie Williamson on the special exceptions to the Plaintiffs' Petition, and at the close of such hearing Respondent announced the rulings of the Court in accordance with its Order of March 17, 1961, overruling certain of said special exceptions, sustaining other special exceptions and reserving other special exceptions for an appropriate ruling at a later time after the filing of an Amended Petition that was promised by Plaintiffs' counsel (R. 26). This is the Order that the Petitioners sought to have the United States District Court and the Court of Appeals, and now seek to have this Court, reverse or revise.

In April, 1961 the last counsel for said Plaintiffs withdrew from said suit (R. 97), and since then Miss Marjorie Williamson, without benefit of legal counsel, has been acting for herself and as spokesman for the other Plaintiffs in said suit. (R. 1-105). Following the withdrawal of said Plaintiffs' counsel Miss Marjorie Williamson filed numerous documents with the State District Clerk and made frequent telephone calls to the Respondent and wrote him

numerous letters demanding that he retract said pretrial Order (R. 97-98).

On February 9, 1962 Respondent voluntarily disqualified himself from trying the case and so advised said Plaintiffs and the Presiding Judge of the Administrative District (R. 98). The Respondent then made inquiry of other District Judges of Dallas County in an effort to find one who would accept a transfer of the suit to his Court (pursuant to Sec. 8 of Art. 199 (101—Dallas), Texas Revised Civil Statutes), but found no Judge who would agree to accept the suit (R. 99). The Respondent then certified the case to the Presiding Judge of the Administrative District, Judge Dallas A. Blankenship, in order that the Presiding Judge might assign another District Judge to try the case in Dallas County, pursuant to Sec. 5 of Art. 200(a), Texas Revised Civil Statutes (R. 99, 102-103).

Said Plaintiffs did not ask for another pretrial or a trial before another State District Judge (R. 103). Instead, they filed an Application for an Injuction in the United States District Court for the Northern District of Texas against Respondent in his capacity as Judge of the 95th District Court of Dallas County, Texas, seeking to have the United States Court: (1) enjoin Respondent, as Judge of a State District Court, from "destroying forever Plaintiffs' legal and constitutional rights" in said State Court suit; (2) assert that the interlocutory order in said State Court suit dated March 17, 1961 is void; and (3) transfer the State Court suit to another State District Court in Dallas County for further proceedings, or in the alternative to try

the case in the United States District Court (R. 14). Said Plaintiffs subsequently filed in the United States District Court an "Amended Motion for a Preliminary Injunction" (R. 16-23), an "Addition to the Amended Motion for a Preliminary Injunction" (R. 24-25), an "Allegation of Jurisdiction" (R. 31-36), an "Amended Allegation of Jurisdiction" (R. 37-46), and an "Amendment to Motion for Preliminary Injunction" (R. 46-55).

The complaint of the Petitioners that they were denied the right of "freedom of speech" in the pretrial hearing is based on the Respondent's having requested Miss Williamson (with only limited success) not to continue arguing on exceptions that had already been fully argued by her counsel and counsel for said Defendants (R. 28-29). Despite this request a total of a day and a half was devoted to this pretrial hearing.

The Texas statutes (Art. 199-101—Dallas, Sec. 8, and Art. 200(a), Sec. 5) which Petitioners claim are unconstitutional or are being enforced against them in a discriminatory manner merely set out the procedure for Petitioners to obtain a fair trial before an impartial Judge after their harassment of Respondent compelled him to disqualify himself from proceeding further in the State Court suit (R. 27-28). Contrary to the statements of the Petitioners, said suit has not been transferred from Dallas County, Texas, and there is no intention on the part of anyone to change the venue of said suit from Dallas County (R. 30; 102-103).

There is no evidence in the record or elsewhere that the Respondent prejudiced any other Judge against said Plaintiffs' alleged cause of action. The Respondent did no more than request the consent of other Judges to transfer the suit to the Court of one of them, as required by Sec. 8 of Art. 199, 101—Dallas (R. 30, 99).

Respondent is unable to find an admission by him, or any evidence in the record or elsewhere, that he denied due process of law and equal protection of the laws to the Petitioners.

Neither the Respondent nor the District Clerk forbade or prevented said Plaintiffs from filing any documents they sought to file in the State District Court. After Miss Williamson filed numerous documents which could not be classified as pleadings, motions or any other type of instrument recognized by the Texas Rules of Civil Procedure, the Respondent asked the Clerk of his Court to tell her to check any additional documents she wished to file with one of the District Judges before filing same (R. 61). There is no evidence in the record or elsewhere and said Plaintiffs have made no contention that they were prevented from filing any pleading or document that they wished to file, or that they wished to file any pleading or document and desisted on account of the action of the Respondent. Petitioners concede (on page 13 of the Petition) that the Presiding Judge permitted filing.

The United States District Court, in which the Petitioners sought relief from the interlocutory Order of the State Court, gave them a full, sympathetic and impartial hearing.

and did not prevent them from filing any and every document that they sought to file, irrespective of the materiality of such documents (R. 77-86; 1-103).

The United States District Court did not remand any action to the State Court. Said Plaintiffs never took steps (if any exist) to remove the State Court suit to the United States Court, and it has not been removed from the State Court, but it remains there untried, waiting for the Petitioners to exhaust their appeals to the United States Courts and other forums, if any, in which they may demand a hearing.

The documents referred to at pages 9, 40 and 50-54 of the Petition are original pleadings, motions and orders filed in the State Court suit, which are needed there and which Miss Williamson subpoenaed to be delivered to the Clerk of the United States District Court, who, at her insistence transmitted them to the Clerk of the Court of Appeals. They were never filed or admitted in evidence, and so far as Respondent can ascertain were never made a part of the Transcript or record in either the United States District Court or the Court of Appeals.

The Petitioners did not and have not exhausted *or even pursued* any right or remedy afforded to them by the Texas Rules of Civil Procedure or the Texas statutes, if they are dissatisfied with and wish to complain of the interlocutory Order of March 17, 1961.

All rights and remedies afforded the Petitioners by the Texas Rules of Civil Procedure and the Texas statutes *are still available to them*, and the Petitioners have not been and will not be deprived of such rights and remedies.

There is no need for Petitioners to enjoin the Respondent from hearing their suit. He has disqualified himself from entering any further orders therein (R. 27-30; 102-103); and can no longer, if he ever did (which he denies) violate their rights, constitutional or otherwise. In fact, with the Respondent disqualified from issuing any orders in the Petitioners' suit, they already have all the relief they have been and are seeking from the United States Courts, except (1) a reversal of the pre-trial Order of March 17, 1961 (which relief they must obtain from the State Courts) and (2) a removal of their suit to the United States District Court (which is not authorized by any statute, decision or rule)."

ARGUMENT

A. The State Court Suit Has Not Yet Been Tried.

B. If the Petitioners Are Entitled to Any Relief It Can Be Obtained in the State Courts.

The suit that the Petitioners and their mother (now deceased, and of whose estate the Petitioners are acting as Independent Executors) filed in the State Court is still pending there untried, waiting for Miss Williamson to

abandon her efforts in the United States Courts and to request another pre-trial or a trial before a judge other than the Respondent (R. 101-103). The Petitioners have not exhausted or even pursued any efforts to obtain relief in the State Courts from the Order, rulings or conduct of the Respondent. They may amend the Third Amended Original Petition they filed in the State Court to conform to the rulings of that court and proceed to trial, or they may refuse to amend such petition and proceed to trial thereon, less any portions thereof stricken as a result of the sustaining of special exceptions; and if dissatisfied with the final judgment of the trial court they may appeal as a matter of right to the State Court of Civil Appeals, and in that court may properly assign error on account of the sustaining of the special exceptions to their petition. *Andrews v. Lemcos*, 60 S.W. 1005; *Drane v. Humble Oil & Rfg. Co.*, 4 S.W. 2d 241; *Heatley v. W. P. Ponder & Sons*, 40 S.W. 2d 951; *Moge v. Houston Oil Co. of Texas*, 260 S.W. 294 (writ d. w. j.); *Rutledge v. Valley Evening Monitor*, 289 S.W. 2d 952; 33 *Tex. Jur.* 596, 600, 602-605, §§ 153, 157, 158, 160; *Tex. Jur.* 10-Year Supp. 243, 246, 249, 252, §§ 176, 180, 183, 184, 186. They may if jurisdictional grounds are present thereafter obtain a further review in the State Supreme Court. And if their suit involves any federal question they may thereafter apply for a writ of certiorari to this Court.

C. The Injunction Sought by the Petitioners Is Not Necessary in Aid of the Jurisdiction or to Protect or Effectuate a Judgment of a United States Court.

No authority is cited in the Petition and it is submitted that none can be found, authorizing the Petitioners to appeal to a United States District Court from an interlocutory Order of the State District Court in this suit, *which involves no federal question* of which the Respondent is aware; and where, even if it were assumed that a federal question is involved, no trial has been had or final judgment rendered in the State Court. This is particularly true here where the Petitioners' (1) did not make the Defendants in the State Court suit parties to their appeal to the United States District Court and instead proceeded therein solely against the State Court Judge who entered the Interlocutory Order, (2) did not make their petition or the answer of the Defendants involved in such Order, or the Order itself, a part of the record in the United States Court, (3) have not proceeded to trial or exhausted *or even pursued* any remedies available to them in the State Courts, (4) have not shown or even alleged any valid reason why the interlocutory Order complained of is erroneous, or (5) set out any valid ground of complaint (other than the fact the State Court Judge (1) attempted to limit the time of the argument on the pleadings, (2) requested Miss Williamson to have her numerous papers checked by another District Judge before filing them, and (3) asked other District Judges to accept an assignment of the suit

to the court of one of them. Title 28, *United States Code*, Sec. 2283; *Herb v. Pitcairn*, 324 U.S. 117, 125-126, 89 L. Ed. 789, 794.

D. As the State Court Suit Has Not Been Tried and the Respondent Has Voluntarily Disqualified Himself, the Issues, If Any, Presented by the Petitioner Are Moot.

As has been pointed out, the State Court suit which the Petitioners seek to have the United States District Court supervise is still pending untried in the State District Court. The Respondent's Order was only an interlocutory Order rendered at a pre-trial relating to the pleadings. The Respondent later voluntarily disqualified himself from taking any further action in the suit. There having been no final judgment in the State Court suit, the Petitioners having been assured that the Respondent will take no further action therein, and all their remedies being still available to them in the State Courts, the issue presented to the United States Court (even if a federal question were present) are moot. *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 81 L. Ed. 835; *Muskrat v. United States*, 219 U.S. 346, 55 L. Ed. 246; *Tregea v. Modesto Irrigation District*, 164 U.S. 179, 41 L. Ed. 395.

E. Removal of This Suit by the Plaintiffs from the State District Court to the United States District Court Is Not Authorized.

Likewise, no authority is cited in the Petition and it is submitted that none can be found that would enable the Petitioners to remove a State Court suit to the United

States District Court eight years after they, *as Plaintiffs*, filed such suit in the State Court; and even if such removal is permitted, the Petitioners are not entitled, as a matter of law, merely because they are dissatisfied with an interlocutory Order rendered therein, to remove such State Court suit to the United States District Court: (1) where *the United States Court does not have jurisdiction and no federal question is involved*, (2) after they filed three amended petitions therein, (3) after they participated in a pre-trial hearing relating to the pleadings and became dissatisfied with the pre-trial Order, and (4) by an injunction proceeding filed in the United States District Court solely against the State Court Judge in whose court such suit is pending. Title 28, *United States Code*, 1441 (a) and (b).

F. The Judgments Below Present No Conflict or Question of Federal Law.

Both decisions below are not only correct—they are the only decisions that could be rendered in this action. A contrary decision would require a United States District Court to exercise supervisory jurisdiction over the pleadings, pre-trial hearings and other interlocutory orders in State District Court suits, and by permitting such supervision and review before a final judgment was rendered in the State Court suits would place an extremely inconvenient, if not impossible, burden on the United States Courts; or would permit the Plaintiffs in a State Court suit whenever they became dissatisfied with the pre-trial

rulings therein, to remove it to a United States Court. Further, a contrary decision would have to be based on the premise that none of the State Courts can give the Petitioners a fair trial or correct the alleged errors of which they complain. Such decision would, it is submitted, be unprecedented and in violation of all pertinent rules and decisions of both the State and the United States Courts.

We have found no decisions that conflict with the judgments of the courts below. Nor does any important federal question, or *any* federal question, appear to be presented here. And, as has been pointed out, unless the United States Courts desire to reverse the State District Court's interlocutory Order before a final judgment has been rendered in the State Court suit, or to remove the State Court suit to the United States Court, all questions presented here are moot.

CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

WILLIAM D. NEARY,
Counsel for the Respondent,
The Hon. Paul Pojeritor,
Judge of the 95th District
Court of Dallas County, Texas

November, 1963.

CERTIFICATE OF SERVICE

I certify that the foregoing Brief for Respondent was duly served on each Mr. Robert M. Williamson and Miss Marjorie Williamson, Individually and as Independent Executors of the Estate of Effie Gilmer Williamson, Deceased, by mail, by depositing the same in a United States mail box, with first class postage prepaid, addressed to each of them at their post office address—4923 Gaston Avenue, Dallas, Texas, on November 16, 1963.

William W. Heaney

APPENDIX A

OPINION OF UNITED STATES DISTRICT JUDGE
May 25, 1962

Miss Williamson, you have a problem that is giving you a lot of worry.

You know men, and it is not every man that is a gentleman, and it is not every woman that is a lady. I know from your reserve and your courage that I should classify you as a lady. I feel a keen desire to do something for you. The mere fact that you are in trouble, and that you cannot trust your State Judge, and that you have come to me with your troubles, is something of a compliment that I will not thrust aside.

The only question is: What can I do? Let me make the matter clear to you.

Remember first that the State Courts on this American continent were functioning and holding court and trying cases for an hundred and fifty years before there ever was a Federal Court. Then when the colonies, or the States, came together and created the United States, the question was: "What power shall we confer upon this new government of the United States and who was going to confer the power?"

Thomas Jefferson was not in the Constitutional Convention, but he wrote a letter to James Madison in which he gave this kind of statement, he said: "Let the States keep all the power that they have, except foreign matters. Let them be regulated and handled by the National Gov-

ernment." The Federal Courts were given certain powers, but those powers were very limited. They were principally on the criminal side, there was the post office, and counterfeiting, and many things like that. And other powers, where one of the litigants lives on this side of the State line and the other on the other side, and the State where the plaintiff lives might be partial. In that case, in certain instances, they allow the case to come to the Federal Court.

Now, I am looking to your file. Motion for a preliminary injunction against Honorable Paul Peurifoy. In the closing paragraph you say: "Therefore the plaintiffs pray the Court to grant this motion of a preliminary injunction to prevent the judge from destroying both plaintiffs' legal and constitutional rights, and to assert to this court an order that is void on the evidence presented herein. And the case transferred from the 95th District Court to another District Court of Dallas County, where it may be tried according to the correct rules of Civil Procedure, with the plaintiffs' legal, constitutional rights."

Therefore, the thing you ask us to do is to go down and regulate the State Judge.

Now, under the Constitution of the United States the State Judge has just as much right to come up here and regulate me as I have to go down there and regulate him. That may be a surprise to you. A feeling prevails that because the United States is a big country and the States a smaller country, that the bigger country can supervise

the conduct of the smaller country. That is not true, any more than an 18-year old son of yours might be larger than you, and because he had strength he might rule and govern you and your husband.

In cases of this kind, suppose your dear friend, and I won't call her name because I don't know who it is, but suppose your dearest friend and her husband had a feeling she should have a divorce, and suppose you would say, "I like Judge Davidson, carry your case there." They couldn't come here, because under the law this court has no jurisdiction over divorce cases.

Suppose one of your friends murdered someone on the street and maybe he had a clear case of self-defense, and you say, "I want your case tried before Judge Davidson." But I couldn't try him because under the law that offense belongs to the State Court.

Now, what does the Federal Court have a right to try?

It has no right under the Constitution to interfere in State Courts, or to enjoin a State Judge from doing or not doing a thing.

You may have the idea that under what is called the Civil Rights, that the Court would intervene. Well, the right of Civil Rights is a term that was a term thrown in, by reason of the feeling in some parts of the nation that our Negro fellow citizens have not been getting a fair deal in elections, therefore, civil rights, is to see that they get their rights in elections.

Another idea is that the Negro has been imposed upon by constables and sheriffs, by putting them in jail, and without any kind of authority from a judge of a court; locking them up in jail, that is handling under color of authority, without authority, when you handle somebody without authority or with the appearance of authority, that is a violation of the civil rights.

No matter you mention here violates your civil rights, because the State Judge is not acting on a color of authority. He acts in court on absolute authority of law.

I am going to have to dismiss your case. I can tell you what you ought to do, I can advise you, but that is not my prerogative unless you ask me. If you were to ask me, then you would not be compelled to follow my advice, but this Court cannot do anything for you any more than he can grant a divorce.

MISS WILLIAMSON:

There are errors in the pleadings filed.

THE COURT:

It makes no difference how the pleadings are worded. It would still be a call on a Federal Judge to go down and tell a State Judge what to do, and that cannot be done under the law.

Now, I think the law is very clear. It is unfortunate that you have lost confidence in your judge, and therefore, I believe you have moved to disqualify him on the ground that he is prejudiced against you. So, if I was to grant your position and send the case back down there I would

send you to a judge that you have no faith in. I cannot just sit here and pick out a Dallas judge and tell him to try your case. The Federal Court has no such authority.

Now, you can do this, and it is very clear. The first thing you ought to do would be to get a lawyer that can advise you.

If you will pardon me, everybody that has an occupation or business is qualified in that business, and suppose you went to a doctor and said, you had a case of pneumonia and the doctor looked at you and he said, "You don't have pneumonia, you have another complaint, you have appendicitis," or "You have blood poisoning." And he would say he cannot treat you for pneumonia and you say, "I know what is the matter with me." Well, that doctor couldn't do you any good, all he could do would be to disqualify himself.

Or, now, suppose, for instance, all the cooks in the country were missing, and suppose you had never cooked a meal, and you went into the kitchen where your cook had been preparing your meals, and you had never been in the kitchen before, and you would look around to see what you were going to do, and you would see some flour here and soda over here and maybe something else up there, then you would say, "How much of this goes in this?" Then you might not recognize the cooking oil, from the honey and molasses, and you would be helpless.

The person that has not had some training in law is just as helpless as a cook in a kitchen that has never been there before.

There are over a thousand lawyers in Dallas, and there are lawyers here who would not charge you a cent to tell you what your rights are here. There are lawyers here that would perhaps tell you what your rights are, they wouldn't try your case, but they would tell you what your next step ought to be and not charge you. There ought to be some lawyer here you have faith in.

I will tell you what I think he would tell you.

Go to the judge of this administrative district and tell him that your judge has disqualified himself, and that you haven't been able to agree upon another judge and for him to get you a judge to try your case on the merits, if he will do it. Maybe he will go down here to Waxahachie or over to Greenville or to Marshall and get you a judge you never saw before, that couldn't have anything against you, and you can present your case to him, but I will say this, before you present your case, you had better have the lawyer friend to tell you what your rights are, and I think he will tell you the same thing I told you, and then you can present your case to a judge.

You cannot present it to the United States Court because the State Courts have retained what power they have, and they still have it, except those things that *affect* the Federal Government, and your lawsuit does not affect the Federal Government.

I am sorry, but I cannot help you any, so all I can do is to tell you what to do, and your case is now dismissed, and don't write me a letter and tell me I have made an error, because you may not get an answer to that letter.

ORDER OF UNITED STATES DISTRICT COURT

May 25, 1962

On this 25th day of May, 1962, came on to be heard in due order the Motion for a Preliminary Injunction of Plaintiffs, EFFIE GILMER WILLIAMSON, ROBERT M. WILLIAMSON, JR. and MARJORIE WILLIAMSON, and all other complaints and motions of Plaintiffs filed herein; and came in person Plaintiffs, ROBERT M. WILLIAMSON, JR. and MARJORIE WILLIAMSON, with Marjorie Williamson representing herself and the other Plaintiffs; and came in person Defendant, the HONORABLE PAUL PEURIFOY, Judge of the 95th District Court of Dallas County, Texas; and the Court having heard the statement and argument of Marjorie Williamson in behalf of Plaintiffs and the statement of Defendant, is of the opinion that all motions and complaints of Plaintiffs should be dismissed;

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that the Motion for a Preliminary Injunction and all complaints and motions of Plaintiffs filed herein be and same are hereby dismissed.

s T. WHITFIELD DAVIDSON
United States District Judge

ORDER AND OPINION OF UNITED STATES DISTRICT COURT OVERRULING MOTIONS FOR REHEARING AND OTHER MOTIONS

June 28, 1962

On this the 28th day of June came on to be heard and considered by the Court certain motions of the plaintiffs in the above numbered and entitled cause: (1) Motion to amend order entered on May 28, 1962, (2) motion for rehearing, (3) motion to correct record.

These several motions by the plaintiffs are directed to and concern an order of the Court entered in the above entitled cause on the 28th of May, 1962, in which the Court held that it was without jurisdiction.

At the time of entering said order, rendering the same from the bench in open court, the Court made it clear to the plaintiff Marjorie Williamson why he was without jurisdiction: simply because a Federal court had neither appellate nor supervisory control over a State district judge. The plaintiff Marjorie Williamson is a lady who commands the respect of the Court and of the public, but she is before the Court here asking for something that the Court is without power to grant.

Plaintiffs filed a suit in the State court of Dallas County, Texas, which came up for hearing before the Honorable Paul Peurifoy, Judge of the 95th Judicial District Court in Dallas County. The ruling of the Court was not acceptable to the plaintiffs and they came to the Federal court for a correction of such ruling and for instruction of the Federal judge as to how the case should be tried.

In deference to the fact that the plaintiff is a lady deserving consideration at our hands or the hands of any court we will again undertake to make clear to her why this court has no jurisdiction.

In the first place, the State courts are older than the Federal courts. They were here administering justice and functioning between litigants for 150 years before the Federal government was organized. When the Constitution was written and adopted these State courts were not abolished nor subordinated to the national courts created by the Constitution of the new nation. The national courts have jurisdiction only of those things conferred upon them by law. And at the time of the creation of the national courts and at time of writing the Constitution itself the State courts were kept as a separate and distinct judicial institution. As a result all cases that originate in the State court must be appealed to an appellate court of the State and then to the Supreme Court of the State. All cases originating in the United States court must be appealed to the Circuit Court of the United States or to the Supreme Court of the United States. Nowhere has a Federal trial court been given supervisory or appellate jurisdiction over State judges.

This Court sitting as a Federal judge has no more authority to tell Judge Peurifoy how he must try your lawsuit than he has to tell us how we must run our court.

Such being the case the plaintiffs have mistaken their forum and have come to this court for relief that we are powerless to grant. Their case was originally dismissed

for this reason and for the same reason the three motions that are now before us are also dismissed.

The case no longer holds any place upon the docket of the court and the Clerk is instructed to file nothing further herein unless expressly instructed by the Court.

The Clerk of the Court will obligingly mail a copy of this order to the parties.

/s/ T. WHITFIELD DAVIDSON
United States District Judge

APPENDIX B

TITLE 28, UNITED STATES CODE
Sec. 1441 (a), (b)

§ 1441. Actions Removable Generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

TITLE 28, UNITED STATES CODE
Sec. 2283

§ 2283. Stay of State Court Proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effect its judgments.

TEXAS REVISED CIVIL STATUTES

Art. 119 (401-Dallas), Sec. 8.

Sec. 8. The respective judges of the district courts of Dallas County shall from time to time, as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court to which it is transferred. . . .

TEXAS REVISED CIVIL STATUTES

Art. 200 (a), Sec. 5

Sec. 5. Judges may be assigned in the manner herein provided for the holding of District Court when the regular Judge thereof, is absent or is from any cause disabled or disqualified from presiding, and in instances where the regular District Judge is present or himself trying cases where authorized or permitted by the Constitution and laws of the State; . . .